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IPLM GROUP, P.A.
POST OFFICE BOX 18455
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EXAMINER

PEREZ DAPLE, AARON C

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 09/09/2004

8

Please find below and/or attached an Office communication concerning this application or proceeding.

5

Office Action Summary

Application No.

09/825,164

Applicant(s)

DUIMOVICH ET AL.

Examiner

Aaron C Perez-Daple

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/13/01</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2154

DETAILED ACTION

1. This Action is in response to Application filed 4/3/01 and preliminary Amendment filed 4/28/04, which have been fully considered.
2. Claims 1-50 are presented for examination.
3. This Action is non-Final.

Claim Rejections - 35 USC § 112, first paragraph

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. **Claims 12-50** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
6. As for claims 12 and 13, lines 7-8 of claim 12 and lines 14-15 of claim 13 recite “the at least one remote site and the at least one user site do not need to acknowledge each other.” This limitation is not included in the original disclosure as filed.
7. Claims 15 and 16 are further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose combining captured communication data and application data from their respective interfaces, as recited in lines 2-3 of claim 15 and lines 2-3 of claim 16.

Art Unit: 2154

8. Claim 17 is further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose a client application adapted to detect and install an application level interface in web browsers, as recited in lines 2-3.
9. Claim 21 is further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose generating graphical illustrations of aggregated end user response in combination with actual performance, recited in lines 2-3.
10. Claims 22 and 23 are further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose a client application adapted to queue a predetermined number of immediately preceding page performance measurements, as recited in lines 2-3 of claim 22.
11. Claims 23, 25, 29-37, 40 and 42-45 are further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose a client application receiving instructions from a monitoring server. Although the specification does disclose a client application receiving instructions from an Authority server, the Examiner finds that the Authority server cannot reasonably be interpreted as a monitoring server since the monitoring server also “receives the preliminary summary data” as recited in line 16 of independent claim 13. The monitoring server could be reasonably interpreted only as comprising the Directory and Summarizer servers of the present invention, which are not disclosed as providing instructions to the client application.
12. Any additional claims which recite a client application receiving instructions from a monitoring server are rejected for the same reasons provided above with respect to claims 23, 25, 29, 31-36, 40 and 42-45.

Art Unit: 2154

13. Claim 25 is further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose a client application adapted to *preempt and reset* any executing measurement transmission rule.
14. Claim 26 is further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose a client application adapted to *request and cache*, for a configurable period of time, metrics associated with objects. Therefore, the Examiner interprets that any temporary storage of data at the client is sufficient to meet the claim limitation.
15. Claim 45 is further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose a monitoring server adapted to determine and initiate software version alterations based on agent-transmitted installation parameters including geography.
16. Claim 50 is further rejected under 35 U.S.C. 112, first paragraph, for failure to disclose the specific alerting mechanisms of email alerts, pager alerts, user interface notifications, and network level diagnostic operations. Therefore, the Examiner finds that any teaching of an alerting mechanism is sufficient to meet the limitation of the claim.
17. As dependent claims, claims 14-50 suffer from the same deficiencies as claim 13.

Claim Rejections - 35 USC § 112, second paragraph

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
19. **Claims 12-50** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 2154

20. As for claims 12 and 13, lines 7-8 of claim 12 and lines 14-15 of claim 13 recite “the at least one remote site and the at least one user site do not need to acknowledge each other.” Because this limitation has not been clearly discussed in the disclosure, the Examiner is unable to properly interpret it. For example, it is not clear what type of acknowledgement the limitation refers to (e.g. a reply to a connection request, authentication, session establishment, etc.). The Examiner notes that the term “acknowledgement” does not have a standard meaning in the art and may refer to many different types of messages or responses. For the purpose of applying prior art, very little patentable weight will be given to this limitation of the claims.
21. Claims 13-50 are further rejected under 35 U.S.C. 112, second paragraph, because the limitations “communication data” and “application data” recited in lines 9-10 of claim 13 have not been clearly discussed in the disclosure. Therefore, the Examiner is unable to properly interpret these limitations. The Examiner notes that the terms “communication data” and “application data” do not have a standard meaning in the art and may reasonably be interpreted to apply to a broad range of data. For example, “communication data” could simply be any data communicated on the network. “Application data” could be any data used by or generated by an application. For the purpose of applying prior art, very little patentable weight will be given to these limitations in the claims.
22. Claims 15 and 16 are further rejected under 35 U.S.C. 112, second paragraph, because the limitation of combining captured communication data and application data, as recited in lines 2-3 of the claims, has not been clearly discussed in the disclosure. Therefore, the Examiner is unable to properly interpret these limitations.

Art Unit: 2154

For the purpose of applying prior art, the Examiner finds that any teaching of capturing data on a network is sufficient to teach the limitation of the claims.

23. Claim 17 is further rejected under 35 U.S.C. 112, second paragraph, because the limitation of a client application adapted to detect and install an application level interface in web browsers, as recited in lines 2-3, has not been clearly discussed in the disclosure. The Examiner interprets that any teaching of a web browser installed on a client is sufficient to meet the limitation of the claim, since a web browser must inherently be installed at the application level in order to function.
24. Claims 22-23 are further rejected under 35 U.S.C. 112, second paragraph, because the limitation of a client application adapted to queue a predetermined number of immediately preceding page performance measurements, recited in lines 2-3 of claim 22, has not been clearly discussed in the disclosure. Therefore, the Examiner is unable to properly interpret the claims. For the purpose of applying prior art, the Examiner interprets that any teaching of transmitting successive performance measurements is sufficient to teach queuing of these measurements.
25. Claims 23, 25, 29-37, 40 and 42-45 are further rejected under 35 U.S.C. 112, second paragraph, because the limitation of a client application receiving instructions from a monitoring server has not been clearly discussed in the disclosure. Therefore, the Examiner is unable to properly interpret the claims. For the purpose of applying prior art, the Examiner finds that any teaching of receiving instructions (which instructions may take the form of configuration information), regardless of the source, is sufficient to meet the limitation of the claims.
26. As dependent claims, claims 14-50 suffer from the same deficiencies as claim 13.

Claim Rejections - 35 USC § 102

27. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

28. **Claims 1, 2 and 4-12** are rejected under 35 U.S.C. 102(e) as being anticipated by Reps et al. (US 6,070,190) (hereinafter Reps).

29. As for claim 1, Reps discloses a method of managing a data access system for transferring data between a server system (servers 104, Fig. 1) and a plurality of user sites (illustrative client computer 106, Fig. 1) upon request from said user sites and wherein at least a subset of said user sites comprise performance monitoring agents (AMA probe, Fig. 1) capable of calculating and transmitting performance data indicative of the data transfer performance of data access systems, said method comprising the steps of:

receiving performance data transmitted from said performance monitor agents (col. 5, lines 24-42; col. 6, lines 15-31);

selecting a quantity of data received (col. 6, lines 15-54);

summarizing the quantity of data received (col. 6, lines 15-54); and

storing said summarized quantity of data into a database (col. 6, lines 15-31).

Art Unit: 2154

30. As for claim 2, Reps discloses the method of claim 1 wherein the quantity of data selected represents performance of the data access system for a specific time interval (col. 6, lines 15-54; col. 23, lines 5-18; Fig. 10).
31. As for claim 4, Reps discloses the method of claim 3 wherein the performance data includes a timestamp means identifying a time when the performance data was observed and wherein the step of selecting comprises collecting data that was observed during the same time interval (timestamp means is considered inherent for associating the data with a time interval; col. 6, lines 15-54; col. 23, lines 5-18; Figs. 8 and 10).
32. As for claim 5, Reps discloses the method of claim 1 further comprising, before the receiving step, the steps of
- receiving data indicative of the performance of a plurality of data access systems from said performance monitoring agents (col. 6, line 66 – col. 7, line 13); and
- filtering said data received to pertain to a selected data access system (col. 6, line 66 – col. 7, line 13).
33. As for claim 6, Reps discloses the method of claim 1 wherein the performance data is correlated to factors of interest (col. 6, lines 15-54; Figs. 8 and 10).
34. As for claim 7, Reps discloses the method of claim 1 wherein the server system comprises at least one Hyper Text Transfer Protocol (HTTP) server (col. 8, lines 56-64).
35. As for claim 8, Reps discloses the method of claim 7 wherein the performance data comprises a summary of performance metrics for a HTTP page (col. 8, lines 56-64).

Art Unit: 2154

36. As for claim 9, Reps discloses the method of claim 1 further including the step of using the stored summarized data as a basis for ascertaining quality of service conditions of said data access system (col. 6, lines 15-54; Figs. 8 and 10).
37. As for claim 10, Reps discloses the method of claim 1 further including the step of calculating further summarized data using said stored summarized data (col. 6, lines 15-54).
38. As for claim 11, Reps discloses a performance management system for managing a data access system for transferring data between a server system (servers 104, Fig. 1) and a plurality of user sites (illustrative client computer 106, Fig. 1) upon request from said user sites and wherein at least a subset of said user sites comprise performance monitoring agents (AMA probe, Fig. 1) capable of calculating and transmitting performance data indicative of the performance of data access systems, said performance management system comprising:
- means for receiving data indicative of the performance of the data access system transmitted from said performance monitor agents (col. 5, lines 24-42; col. 6, lines 15-31);
 - means for selecting a quantity of data received (col. 6, lines 15-54);
 - means summarizing the quantity of data received (col. 6, lines 15-54);
 - means for storing said summarized quantity of data into a database (col. 6, lines 15-54); and
 - means for utilizing said the stored summarized data as a basis for ascertaining quality of service conditions of said data access system (col. 6, lines 15-54).

Art Unit: 2154

39. As for claim 12, Reps discloses a performance management system that monitors data transferred between at least one remote site and at least one user site, comprising:

a client (AMA probe, Fig. 1) that resides on the at least one user site (client computer 106, Fig. 1) and collects performance data associated with the data received from the at least one remote site (servers 104, Fig. 1) (col. 5, lines 17-23); and

an agent in communication with the client and residing on the at least one user site, the agent being adapted to create preliminary summary data of the performance data retrieved from the at least one remote site, wherein the at least one remote site and the at least one user site do not need to acknowledge each other (col. 5, lines 38-42; col. 6, lines 1-5; col. 6, lines 19-31).

Claim Rejections - 35 USC § 103

40. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

41. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Reps.

Reps does not specifically disclose that the time interval is 15 minutes. However, Reps teaches that the time scale may be varied by the user in order to view the system performance over specific time intervals (col. 12, lines 16-27; col. 23, lines 5-18; sampling interval, Fig. 3; Figs. 7 and 12). Therefore, it would have been obvious to

Art Unit: 2154

one of ordinary skill in the art at the time of the invention to modify Reps by setting the time interval to 15 minutes in order to observe system performance on a relatively fast time scale.

42. **Claims 13-50** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reps et al. (US 6,070,190) (hereinafter Reps) in view of Killian (US 6,438,592 B1) (hereinafter Killian).
43. As for claim 13, Reps discloses a performance management system that monitors data transferred between at least one remote site and at least one user site, comprising:
- a client (AMA probe, Fig. 1) that resides on the at least one user site (client computer 106, Fig. 1) and collects performance data associated with the data received from the at least one remote site, wherein the performance data is associated with individual *object* retrievals (col. 5, lines 6-42);
 - a client application associated with the client and residing on the at least one user site, the client application comprising:
 - a data gathering module that is adapted to capture at least the performance data, wherein the performance data corresponds to at least communication data and application data (col. 5, lines 17-23); and
 - an agent that is adapted to create preliminary summary data from at least the performance data, wherein the preliminary summary data includes summaries of at least the individual *object* retrievals from the at least one remote site (servers 104, Fig. 1), wherein the at least one remote site and at least one user site do not need to acknowledge each other (col. 5, lines 38-42; col. 6, lines 1-5; col. 6, lines 19-31); and

at least one monitoring server that receives the preliminary summary data from the client application (col. 6, lines 15-31).

Because Reps teaches capturing performance data associated with the transfer of HTML based applications over the internet (col. 8, lines 56-64), it may be argued that Reps inherently teaches capturing performance data associated with web page object retrievals. However, Reps does not explicitly teach capturing performance data associated with web page object retrievals. Killian teaches capturing performance data associated with web page object retrievals (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by capturing performance data associated with web page object retrievals in order to improve the performance provided by web servers to client computers, as taught by Killian (col. 3, lines 20-22).

44. As for claim 14, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to simultaneously integrate with at least a network level interface and an application level interface (col. 5, lines 17-62).
45. As for claims 15 and 16, Reps teaches the performance management system of claims 14 and 13, wherein the client application is adapted to combine the captured communication data and application data gathered from the network level interface and the application level interface into a single page performance record to link the communication data and application data (col. 5, lines 17-62).
46. As for claim 17, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to detect and install an application

Art Unit: 2154

level interface in web browsers that do not have the application level interface (col. 7, lines 58-65).

47. As for claim 18, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to determine overall usage of a data access system (Figs. 8-10).
48. As for claim 19, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to ascertain a quality of service based on an aggregated end user response to a data access system (Figs. 8-10).
49. As for claim 20, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to analyze aggregated end user response based on actions taken within a data access system and wherein the aggregated end user response is used to infer user behavior (col. 6, line 66 – col. 7, line 13).
50. As for claim 21, Reps teaches the performance management system according to claim 20, wherein the received performance data is used to generate graphical illustrations of aggregated end user response in combination with actual performance within a data access system (col. 5, lines 39-45).
51. As for claim 22, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to queue a predetermined number of immediately preceding page performance measurements for transmission or internal assessment (col. 5, lines 39-45).
52. As for claim 23, Reps teaches the performance management system according to claim 22, wherein the client application is adapted to transmit the queued page

Art Unit: 2154

performance measurements when instructed by the at least one monitoring server or in response to the internal assessment (col. 5, lines 39-45).

53. As for claim 24, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to respond to and transmit a configurable number of subsequent page performance measurements based on a set of received rules including a number of pages to transmit or a duration of time to transmit subsequent pages (col. 5, lines 43-62).

54. As for claims 25, 29-37, 40 and 42-45, under the interpretation presented above under the 35 U.S.C. 112, second paragraph, rejection, the Examiner finds that by teaching the use of configuration information to adjust the specific monitoring parameters, Reps meets all the limitations of the claims. See col. 11, line 42 – col. 12, line 27.

Assuming without admitting that the limitation of a client application receiving instructions from a monitoring server has support in the original disclosure, Reps does not appear to explicitly teach a client application receiving instructions from a server. However, Killian explicitly teaches a client application receiving instructions from a monitoring server in order to adjust the monitoring parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by receiving instructions from a server at a client application in order to optimize the monitoring parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

55. As for claims 26-28, although Reps teaches requesting and caching objects for configurable period of time, Reps does not specifically teach that the objects may

Art Unit: 2154

comprise graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames. Killian teaches performance monitoring for objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by using objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames in order to monitor performance parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

56. As for claims 38, 39 and 41, although Reps teaches a graphical user interface communicating metrics associated with object retrievals (Figs. 8-10), Reps does not specifically disclose that the objects may comprise web page objects. Killian teaches obtaining metrics for web page object retrievals in order to monitor performance parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by communicating metrics associated with web page object retrievals in order to monitor performance parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

57. As for claim 46, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to collect, aggregate,

Art Unit: 2154

and display performance data associated with predefined individual objects measured by the agent (col. 6, lines 15-54).

58. As for claim 47, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to store, display and determine trends based on performance data that is associated with individual objects measured by the agent (col. 6, line 15 – col. 7, line 13; Figs. 8-10).
59. As for claim 48, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to collect and aggregate performance data for comparison to predefined performance based threshold settings (col. 5, lines 63-67).
60. As for claim 49, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to create, store, and evaluate performance thresholds settings based on at least one of metric values, metric value percentage differences, direct metric comparison with other metrics, historical metric values, and metric value rate of change calculations (col. 5, line 63 – col. 6, line 62).
61. As for claim 50, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to monitor performance threshold settings and, if predetermined values are exceeded, provide automated user indications including at least one of email alerts, pager alerts, user interface notifications, and network level diagnostic operations (col. 5, lines 63-67;)

Conclusion

Art Unit: 2154

62. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,701,363 B1, note abstract and Fig. 4;

US 6,282,570 B1, note Figs. 1-3;

US 6,021,437, note Fig. 1;

US 5,835,911, note version control system;

US 5,752,042, note version control system;

search results for application, techdictionary.com, visited 8/26/04.

63. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron C Perez-Daple whose telephone number is (703) 305-4897. The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 2154

pd 9/2/04

Aaron Perez-Daple

N. E. Hardy